S.B.Criminal Revision Petition No.601/2006

Jamna Singh & Anr. vs. The State & Anr.

17.9.2007

HON'BLE MR.JUSTICE G.S.SARRAF

Mr. Anurag Sharma for petitioners.
Mr. B.K.Sharma, P.P.
Mr. Jainendra Jain for respondent No.2

Reportable

This criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred against the order dated 23.5.2006 passed by Additional Sessions Judge, Hindaun City in criminal revision petition No.29/2006 whereby the order dated 17.3.2006 of Addl. Chief Judicial Magistrate, Hindaun City has been set aside and the matter has been remanded for further inquiry and for passing afresh order in accordance with law.

The brief facts giving rise to the present revision petition are that a written report was submitted by one Varun Singh on 19.4.2005 at the police station Hindaun City against the petitioners and one Nawab Singh regarding an incident dated 18.4.2005 wherein his cousin Satyapal had died. After investigation, the police filed a negative final report. The respondent No.2 Shiv Charan filed a protest petition. Learned Additional Chief Judicial Magistrate, Hindaun City recorded the statements of witnesses under Sections 200 and 202 Cr.P.C. and

by order dated 17.3.2006 dismissed the protest petition and accepted the negative final report. The respondent No.2 filed a revision petition against this order. Learned Additional Sessions Judge, Hindaun City by the impugned order allowed the revision petition and remanded the case for further inquiry and for passing fresh order in accordance with law. Aggrieved by this order, the petitioners have filed the present revision petition.

Heard learned counsel for the petitioners, learned Public Prosecutor and learned counsel for the respondent No.2.

Learned counsel for the petitioners contends that the impugned order has been passed without giving any opportunity of hearing to the petitioners and, therefore, the order is bad in law. He has placed reliance on a decision of this Court in the case of Kishan Lal vs. State of Rajasthan **(1991 RCC 619).**

Learned Public Prosecutor and learned counsel for respondent No.2 have supported the impugned order.

The order of dismissal of the complaint under Section 203 Cr.P.C. or the order accepting the negative final report can be challenged by way of a revision

petition under Section 397 read with Section 401 Cr.P.C. Such orders are judicial orders determining the rights of the parties. Proviso to Section 398 and Section 401(2) Cr.P.C. provide that the accused has a right of being heard if revision petition is filed against such orders. Proviso to Section 398 Cr.P.C. says that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made. Sub-section (2) of Section 401 Cr.P.C. also says that no order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by a pleader in his own defence. Thus, these provisions make it obligatory for the revisional court to give an opportunity of hearing to the accused before passing the order. Moreover, the principle of natural justice also demands that no adverse order against an accused or any person should be passed without giving him an opportunity of hearing.

In the instant case, it is not disputed that no opportunity of hearing has been given to the petitioners and the impugned order has been passed behind their back.

In view of the above discussions, the impugned order cannot be upheld as it is in contravention to the proviso

of Sections 398 and Section 401(2) Cr.P.C.

Consequently, I allow this revision petition and set aside the impugned order dated 23.5.2007 and remand the case to the Additional Sessions Judge, Hindaun City for deciding the revision petition afresh after giving opportunity of hearing to the petitioners.

The parties are directed to appear before the Additional Sessions Judge, Hindaun City on 22.10.2007.

Office is directed to return the record of the case immediately to Additional Sessions Judge, Hindaun City.

(G.S.Sarraf),J.

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